



PATENT

ATTY. DOCKET NO. IBM/138

Confirmation No. 4269

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Cary Lee Bates et al. Art Unit: 3626
Serial No. : 09/553,010 Examiner: Vanel Frenel
Filed : April 20, 2000
For : LOCATION-BASED VEHICLE RISK ASSESSMENT SYSTEM

Cincinnati, Ohio 45202

December 16, 2003

Mail Stop Appeal Brief - Patents
Commissioner for Patents
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GROUP 3600**TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION-37CFR 191)**

1. Transmitted herewith in triplicate is the APPEAL BRIEF in this application with respect to the Notice of Appeal received by the Office on October 16, 2003.
2. **STATUS OF APPLICANT**

This application is on behalf of

☒ **other than a small entity**☐ small entity

Verified Statement:

☐ attached☐ already filed

3. **FEE FOR FILING APPEAL BRIEF**

Pursuant to 37 CFR 1.17(f) the fee for filing the Appeal Brief is:

☐ Small entity \$165.00☒ Other than a small entity \$330.00

4. **EXTENSION OF TIME**

Applicant petitions for an extension of time under 37 C.F.R. 1.136(a) for the total number of months checked below:

<u>Months</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
_____ one month	\$ 110.00	\$ 55.00
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If an additional extension of time is required, please consider this a petition therefor.

5. **TOTAL FEE DUE**

The total fee due is:

Appeal Brief Fee \$330.00

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6. **FEE PAYMENT**

XX Attached is a check in the sum of \$330.00.

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7. **FEE DEFICIENCY**

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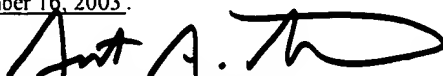
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Attorney Docket No. IBM/138
Confirmation No. 4269

#9
(1063)
PATENT

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte Cary Lee Bates, Steven Paul Jones, Eric John Nelson and John Matthew Santosuosso

Appeal No. _____
Application No. 09/553,010

APPEAL BRIEF



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APPEAL BRIEF

I. REAL PARTY IN INTEREST

This application is assigned to International Business Machines Corporation, of Armonk, New York.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-9, 13, 17-26, and 29-30 are pending in the Application, with claims 1, 17, and 29 being once amended, and claims 10-12, 14-16, and 27-28 being canceled. All pending claims stand rejected, and are now on appeal.

IV. STATUS OF AMENDMENTS

There have been no amendments filed subsequent to final rejection (Paper 7).

V. SUMMARY OF INVENTION

Applicants' invention is generally directed to an apparatus, program product, and method in which the location of a vehicle during rental of that vehicle is tracked so that risks associated with the actual usage of a vehicle can be accommodated in the costs for the rental. In particular, a determination is made during a time period associated with a vehicle rental as to whether the vehicle is located at a location having an increased level of risk. Costs for an economic transaction associated with that vehicle rental are then adjusted based at least in part on the presence of the vehicle in a location with an increased level of risk.

As shown, for example, in Figs. 1 and 2, and as described at page 7, line 24 to page 8, line 10, location tracking of a vehicle may be performed using a tracking system 14 mounted in the vehicle and including a GPS receiver 24. Typically, this tracking system records zone/timestamp entries that record both the time and the region or zone for a vehicle at a particular point in time (Application, page 8, line 24 to page 9, line 13). Of note, in some embodiments it may be desirable to store the zone, rather than the precise location, of a vehicle, as well as to add entries only when the current zone for a vehicle changes. (*Id.*, see also Application, Fig. 4, blocks 112 and 114, as well as page 14, lines 24-31). Zones are typically associated with different levels of risk, and are defined in various manners such as point/radius pairs, ranges of latitudes/longitudes, complex boundaries, etc. (Application, page 8, lines 24-31).

By using zones, and optionally storing entries only when a vehicle moves to a new zone, the size of the database used in the tracking system may be minimized (Application, page 9, lines 3-13). Doing so reduces storage requirements for the tracking system, and may assist in reducing transmission times when downloading data to a handheld or billing computer.

Typically, a handheld or other computer such as a billing computer is used to collect downloaded data from a vehicle's tracking system upon return of the vehicle at the completion of a rental. The collected data is then used to adjust the cost of a vehicle rental in a number of manners, e.g., by adding a surcharge or selecting a higher base rate for vehicles that were taken into more dangerous zones (Application, page 16, line 25 to page 17, line 5).

Among other benefits, by accounting for where a customer uses a rental vehicle, a rental company is better able to allocate costs to individual customers so that those customers who

expose a vehicle to greater risks pay a premium over those customers who expose a vehicle to comparatively lower risks. Moreover, customers are provided with an economic incentive to reduce the risks associated with their usage of a vehicle and decrease their individual rental cost. Also, this economic incentive to customers will benefit the rental company in addition to the customers, as the greater care taken by customers will typically lead to lower incidents of wear and tear, accidents, crimes, etc. In some instances, this may result in lower operating costs for the rental company, and possibly permit the rental company to charge lower rates to its customers.

VI. ISSUE

Whether claims 1-9, 13, 17-26, and 29-30 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,064,970 to McMillan et al. (hereinafter "*McMillan*") in view of U.S. Patent No. 6,393,346 to Keith et al. (hereinafter "*Keith*"), and further in view of U.S. Patent No. 6,006,148 to Strong (hereinafter "*Strong*").

VII. GROUPING OF CLAIMS

Claims 1-9, 13, 17-26, and 29-30 do not stand or fall together.

VIII. ARGUMENT

Applicants respectfully submit that the Examiner's obviousness rejections of claims 1-9, 13, 17-26, and 29-30 are not supported on the record, and that the rejections should be reversed. A *prima facie* showing of obviousness requires that the Examiner establish that the differences between a claimed invention and the prior art "are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. §103(a). Such a showing requires that all claimed features be disclosed or suggested by the prior art. Such a showing also requires objective evidence of the suggestion, teaching or motivation to combine or modify prior art references, as "[c]ombining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight." In re Dembiczak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Applicant respectfully submits that, in the instant case, the Examiner has failed to establish a *prima facie* case of obviousness as to any of the pending claims, and as such, the rejections should be reversed. Specific discussions of the non-obviousness of each of the aforementioned claims are presented hereinafter.

Claim 1

Claim 1 recites a method of conducting an economic transaction associated with rental of a vehicle over a period of time. The claimed method includes tracking the location of the vehicle during at least a portion of the period of time associated with the rental, including detecting that the vehicle is located at a location having an increased level of risk, and adjusting a cost associated with the economic transaction associated with the rental at least in part based on the location of the vehicle at the location having the increased level of risk.

In rejecting the claim, the Examiner relies on three references: *McMillan*, *Keith*, and *Strong*. *McMillan* is cited for disclosing the use of location tracking of a vehicle to determine the cost of insurance, while *Keith* is cited for disclosing the creation of timestamps that record the location of a vehicle at specific points in time for tax and other business purposes. The Examiner admits, however, in ¶2(A) of the July 16, 2003 Office Action, that neither *McMillan* nor *Keith* expressly disclose an economic transaction associated with rental of a vehicle. To address this deficiency, the Examiner relies on *Strong* to disclose such an economic transaction, and argues that one of ordinary skill in the art would have found it obvious to incorporate an economic transaction associated with rental of a vehicle into the system taught by *McMillan* and *Keith*.

By the Examiner's own admission, *McMillan*, despite disclosing the use of vehicle location data to cost insurance, does not disclose the use of location data to cost a vehicle rental. The predominant issue on appeal with respect to claim 1 is thus put simply: does the prior art of record suggest to one of ordinary skill the desirability of modifying *McMillan* to utilize vehicle location data to cost a vehicle rental? Applicants respectfully submit that the prior art of record does not, and that claim 1 is therefore non-obvious over the prior art of record.

As noted above, the Examiner is required to provide objective evidence of a motivation in the art to modify *McMillan* to use vehicle location data in the costing of vehicle rentals.

However, none of the references cited by the Examiner provide any such objective evidence, and outside of these references, the Examiner has provided no other objective evidence showing that one of ordinary skill in the art would be motivated to modify the *McMillan* system for use in costing vehicle rentals. Absent any such evidence, the Examiner's rejection cannot be sustained.

McMillan itself, for example, discusses only the use of vehicle location data in insurance applications. The reference fails to disclose that the techniques described therein have any use outside of the insurance field, much less specifically within the vehicle rental field. Accordingly, the Examiner cannot rely on *McMillan* to provide the necessary objective evidence.

Keith likewise fails to provide the necessary objective evidence. *Keith* discloses only the use of vehicle location data to monitor mileage and time spent at various destinations for various business needs such as ensuring employees are doing their jobs, tracking business usage for tax purposes, billing clients based upon actual time spent at a client location, and other related business uses. As with *McMillan*, *Keith* fails to disclose any usage outside of these delineated uses, much less in the specific field of vehicle rental. Accordingly, *Keith* is likewise insufficient to provide the necessary objective evidence.

Strong, which is directed to vehicle rental, discloses a vehicle rental and tracking system that is used to track usage of a vehicle and speed vehicle return at the end of a rental period based upon the transmission of vehicle data logged by sensors on the vehicle. However, it is important to note that among the various types of vehicle data that is logged, e.g., fuel consumption, total mileage, excessive speed, etc., none of this data is location-based. Indeed, there is no location tracking used in the monitoring circuit for any rental vehicle, nor is vehicle location data ever used in the calculation of the cost of a vehicle rental. Put another way, *Strong* does not suggest to one of ordinary skill in the art that location-based data would ever be useful in the context of a costing a vehicle rental. Accordingly, Applicants respectfully submit that *Strong* similarly fails to provide the necessary objective evidence.

Despite the shortcomings of *Strong*, the Examiner attempts to argue that one of ordinary skill in the art would be motivated to combine *Strong* with the system taught by *McMillan* and *Keith*, apparently on the premise that the billing system taught in *Strong* could be use to facilitate the calculation of costs for an economic transaction. See July 16, 2003 Office Action, ¶¶2(A)

and 3. Precisely how such a billing and return system would be of use in an insurance context, however, is entirely unclear, and would not appear to be a modification of the *McMillan* system that one of ordinary skill in the art would find to be desirable.

In particular, *McMillan* discloses a system in which a wireless communications link such as cellular telephone, radio, or satellite is used to upload data to a central control station (col. 6, 62-65). Of note, all of these upload methods do not require a customer to drive his or her vehicle to any specific location for an upload of data to be performed. *Strong*, in contrast, discloses a short range wireless communication that occurs when a customer returns a rental vehicle to a specific return area. Thus, even assuming *arguendo* that the Examiner's support for motivation is appropriate, the Examiner's incorporation of the *Strong* return and billing system into the *McMillan* would lead to a system where insurance customers would be required to drive to specific locations to upload data used in calculating insurance costs. Applicants submit that such a system would be significantly less desirable than that disclosed in *McMillan*, and as such, one of ordinary skill in the art would simply not look to incorporate the functionality of the *Strong* system into the *McMillan* system.

Based upon the failings in each of the aforementioned references, and given also that the Examiner has failed to point out any other resource establishing a motivation to modify *McMillan* for use in a vehicle rental application, Applicants respectfully submit that the Examiner has failed to raise a *prima facie* case of obviousness as to claim 1. Indeed, it appears that the Examiner's rejection is based entirely on hindsight, as the only motivation that could be found for modifying *McMillan* for use in vehicle rental is found in Applicants' disclosure. In essence the Examiner has used Applicants' disclosure as a blueprint for constructing the rejection, and has relied on disparate teachings from different references to map to different elements of the claim. Such reasoning is improper under 35 U.S.C. §103(a), and as such, Applicants respectfully submit that the rejection of claim 1 should be reversed.

Reversal of the Examiner's rejection of claim 1, and allowance of the claim, are therefore respectfully requested.

Claims 2-4

Claims 2-4 are not separately argued.

Claim 5

Claim 5 depends ultimately from claim 1, and additionally recites the concepts of determining a current region for a vehicle from a first calculated location, and storing a timestamped entry in a database for a second calculated location only if the region for the second calculated location differs from the region associated with the first calculated location.

In rejecting claim 5, the Examiner admits that *McMillan* does not disclose storing a timestamped entry only if the region of a second calculated location differs from that of a first calculated location. October 8, 2002 Office Action, ¶4(C). Instead, the Examiner argues that *Keith* discloses this claimed feature, citing col. 2, lines 1-54.

Applicants respectfully submit, however, that the prior art of record does not disclose or suggest each and every feature of claim 5, most notably the combination of determining a region for a vehicle from a location, and storing a timestamped entry in a database only if the vehicle is no longer in the same region.

Of note, *Keith* discloses only the periodic storing of location information, either based upon regular time intervals or distances (col. 4, lines 12-15). Fig. 2 of *Keith*, for example, illustrates storing location timestamps upon expiration of a timer that is reset after storing each location timestamp. Moreover, this location information is based upon a specific latitude and longitude, and not a "region" as is recited in claim 5.

Keith also specifically discloses that location timestamps are still logged, even when a vehicle is stopped. Col. 6, lines 11-60, of *Keith*, for example, describe that, even when a vehicle is stopped (indicated, for example, by sensing the vehicle being shut off, by detecting a null speed sensor, or by detecting multiple navigational fixes in the same location), location timestamps are still recorded. Indeed, *Keith* discloses, at col. 6, lines 20-24, that "[i]n what is expected to be the more common situation, in which no separate stop-indicating sensor is employed, a sequence of location records associated with the same location (within the precision of the system) would be indicative of a non-waypoint stop." As such, it is quite apparent that

Keith envisions that timestamps must be stored at regular intervals irrespective of whether a vehicle is or is not stopped.

There is simply no disclosure or suggestion in *Keith* of the desirability of suppressing the storage of location timestamps in response to detecting that a vehicle is stopped, much less that the vehicle is still within the same region as a prior timestamp, as is effectively recited in claim 5. Moreover, Applicants can find no disclosure in either of *McMillan* or *Strong* that purports to disclose this particular concept. Given that restricting the storage of location data only when a vehicle has changed regions has the benefit of reducing the amount of data that needs to be stored in a database, Applicants submit that the concepts recited in claim 5 provide a unique and unexpected advantage that is not appreciated in the prior art of record. Therefore, in addition to being non-obvious based upon its dependency upon claim 1, claim 5 is also non-obvious over the prior art of record for the additional reasons set forth herein. Reversal of the Examiner's rejection of claim 5, and allowance of the claim, are therefore respectfully requested.

Claims 6-9

Claims 6-9 are not separately argued.

Claim 13

Claim 13 recites a method of renting a vehicle that *inter alia* includes tracking the location of a vehicle during a rental period, and increasing the cost associated with renting the vehicle based upon detecting the location of the vehicle in a location having an increased level of risk. As with claim 1, claim 13 is rejected as being obvious in view of the combination of *McMillan*, *Keith* and *Strong*.

However, as discussed above in connection with claim 1, the Examiner has failed to provide any objective evidence of a motivation in the art to modify the system of *McMillan* for use in costing a vehicle rental. Accordingly, claim 13 is non-obvious over the prior art of record for the same reasons as presented above for claim 1. Reversal of the Examiner's rejection of claim 13, and allowance of the claim, are therefore respectfully requested.

Claim 17

Claim 17 recites an apparatus that includes *inter alia* a program configured to receive location information from a vehicle location tracking system during rental of a vehicle, and to adjust a cost associated with a rental economic transaction based upon the location information indicating that the vehicle was located in a location having an increased level of risk. As with claim 1, claim 17 is rejected as being obvious in view of the combination of *McMillan*, *Keith* and *Strong*.

However, as discussed above in connection with claim 1, the Examiner has failed to provide any objective evidence of a motivation in the art to modify the system of *McMillan* for use in costing a vehicle rental. Accordingly, claim 17 is non-obvious over the prior art of record for the same reasons as presented above for claim 1. Reversal of the Examiner's rejection of claim 17, and allowance of the claim, are therefore respectfully requested.

Claims 18-20

Claims 18-20 are not separately argued.

Claim 21

Claim 21 depends ultimately from claim 17, and additionally recites the concept of storing a timestamped entry at a point in time only when a current region for a vehicle at that time differs from a previous region for the vehicle at a previous point in time. However, as discussed above in connection with claim 5, the combination of *McMillan*, *Keith* and *Strong*, upon which claim 21 is rejected, does not disclose or suggest this combination of features.

Accordingly, claim 21 is non-obvious over the prior art of record for the same reasons as presented above for claim 5. Reversal of the Examiner's rejection of claim 21, and allowance of the claim, are therefore respectfully requested.

Claims 22-26

Claims 22-26 are not separately argued.

Claim 29

Claim 29 recites a program product that includes *inter alia* a program configured to receive location information for a vehicle during rental of a vehicle, and to adjust a cost associated with a rental of the vehicle based upon the location information indicating that the vehicle was located in a location having an increased level of risk. As with claim 1, claim 29 is rejected as being obvious in view of the combination of *McMillan, Keith* and *Strong*.

However, as discussed above in connection with claim 1, the Examiner has failed to provide any objective evidence of a motivation in the art to modify the system of *McMillan* for use in costing a vehicle rental. Accordingly, claim 29 is non-obvious over the prior art of record for the same reasons as presented above for claim 1. Reversal of the Examiner's rejection of claim 29, and allowance of the claim, are therefore respectfully requested.

Claim 30

Claim 30 is not separately argued.


IX. CONCLUSION

In conclusion, Applicants respectfully request that the Board reverse the Examiner's rejections of claims 1-9, 13, 17-26, and 29-30, and that the Application be passed to issue. If there are any questions regarding the foregoing, please contact the undersigned at 513/241-2324. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

Date: 16 DEC 2003

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APPENDIX A: CLAIMS ON APPEAL (S/N 09/553,010)

1. (Once Amended) A method of conducting an economic transaction associated with rental of a vehicle over a period of time, the method comprising:

(a) tracking the location of the vehicle during at least a portion of the period of time associated with the rental, including detecting that the vehicle is located at a location having an increased level of risk; and

(b) adjusting a cost associated with the economic transaction associated with the rental at least in part based on the location of the vehicle at the location having the increased level of risk.

2. (Unchanged) The method of claim 1, wherein the increased level of risk is based on at least one of risk of vehicle theft, risk of injury, risk of crime, risk of vehicle accident, risk of hazardous road conditions, risk of terrorist activity, risk of combat activity, and combinations thereof.

3. (Unchanged) The method of claim 1, wherein tracking the location of the vehicle includes:

(a) calculating the location of the vehicle at a point in time using a location sensor coupled to the vehicle; and

(b) storing a timestamped entry in a database identifying the point in time and the calculated location of the vehicle at such point in time.

4. (Unchanged) The method of claim 3, wherein the location sensor includes a Global Positioning System (GPS) receiver.

5. (Unchanged) The method of claim 3, wherein tracking the location of the vehicle further includes determining a current region for the vehicle from the calculated location, wherein calculating the location of the vehicle includes calculating a second location for the

vehicle at a second point in time, and wherein storing the timestamped entry in the database includes storing a second timestamped entry in the database for the second calculated location only if the region associated with the second calculated location differs from the region associated with the first calculated location.

6. (Unchanged) The method of claim 5, wherein the current region is selected from a plurality of regions, the method further comprising assigning a level of risk to each of the plurality of regions.

7. (Unchanged) The method of claim 1, wherein adjusting the cost associated with the economic transaction includes adding a surcharge to the cost in response to detection of the location of the vehicle at the location having the increased level of risk.

8. (Unchanged) The method of claim 7, wherein the amount of the surcharge is based on an amount of time that the vehicle is located at the location having the increased level of risk.

9. (Unchanged) The method of claim 1, wherein adjusting the cost associated with the economic transaction includes selecting one of a plurality of base rates based upon detection of the location of the vehicle at the location having the increased level of risk.

10. - 12. (Canceled).

13. (Unchanged) A method of renting a vehicle, the method comprising:

(a) tracking the location of the vehicle during at least a portion of a rental period, including detecting that the vehicle is located at a location having an increased level of risk during the rental period; and

(b) increasing the cost associated with renting the vehicle based on detecting the location of the vehicle at the location having the increased level of risk.

14. - 16. (Canceled).

17. (Once Amended) An apparatus, comprising:

(a) a vehicle location tracking system configured to track the location of a vehicle during at least a portion of a period of time associated with an economic transaction associated with rental of the vehicle; and

(b) a program configured to receive location information from the vehicle location tracking system to identify the location of the vehicle during the portion of the period of time associated with the economic transaction associated with rental of the vehicle, at least a portion of the location information indicating that the vehicle was located at a location having an increased level of risk, the program further configured to adjust a cost associated with the economic transaction associated with rental of the vehicle at least in part based on the location of the vehicle at the location having the increased level of risk.

18. (Unchanged) The apparatus of claim 17, wherein the increased level of risk is based on at least one of risk of vehicle theft, risk of injury, risk of crime, risk of vehicle accident, risk of hazardous road conditions, risk of terrorist activity, risk of combat activity, and combinations thereof.

19. (Unchanged) The apparatus of claim 17, wherein the vehicle location tracking system comprises a location sensor coupled to the vehicle.

20. (Unchanged) The apparatus of claim 19, wherein the location sensor comprises a Global Positioning System (GPS) receiver.

21. (Unchanged) The apparatus of claim 19, wherein the vehicle location tracking system further includes a second program configured to store the location information in the form of timestamped entries, each identifying one of a plurality of regions and a time at which the vehicle was located in such region, the second program further configured to add a timestamped entry at a second point in time only when a current region for the vehicle at the second point in time differs from a previous region for the vehicle at a first, previous point in time.

22. (Unchanged) The apparatus of claim 21, wherein each of the plurality of regions is associated with a level of risk.

23. (Unchanged) The apparatus of claim 19, wherein the vehicle location tracking system is coupled to the vehicle, the apparatus further comprising:

- (a) a billing computer upon which the program executes; and
- (b) a handheld computer configured to interface with the vehicle location tracking system to obtain the location information therefrom, and to interface with the billing computer to download the location information thereto.

24. (Unchanged) The apparatus of claim 17, wherein the program is configured to adjust the cost associated with the economic transaction by adding a surcharge to the cost in response to detection of the location of the vehicle at the location having the increased level of risk.

25. (Unchanged) The apparatus of claim 24, wherein the amount of the surcharge is based on an amount of time that the vehicle is located at the location having the increased level of risk.

26. (Unchanged) The apparatus of claim 17, wherein the program is configured to adjust the cost associated with the economic transaction by selecting one of a plurality of base rates based upon detection of the location of the vehicle at the location having the increased level of risk.

27. - 28. (Canceled).

29. (Once Amended) A program product, comprising:

- (a) a program configured to receive location information identifying the location of a vehicle during at least a portion of a period of time associated with rental of the vehicle, at least a portion of the location information indicating that the vehicle was located at a location having an increased level of risk, the program further configured to

Appendix A: Claims on Appeal 09/553,010

adjust a cost associated with the rental of the vehicle at least in part based on the location of the vehicle at the location having the increased level of risk; and

(b) a signal bearing medium bearing the program.

30. (Unchanged) The program product of claim 29, wherein the signal bearing medium includes at least one of a recordable medium and a transmission medium.